

February 25, 2014

William D. McMinn  
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Re: Your Request for Advice  
**Our File No. A-14-018**

Dear Mr. McMinn:

This letter responds to your request for advice on behalf of Port Commissioner, Garry Bonelli, regarding the provisions of the Political Reform Act (the “Act”).<sup>1</sup>

### QUESTIONS

1. Are the payments by the Jewish Institute for National Security Affairs (JINSA) related to travel, lodging and meals considered a gift to the Commissioner?
2. If payments for the travel, lodging and meals are considered a gift, is there an exception such that would apply, so that the Commissioner can accept the invitation and participate in the JINSA event?

### CONCLUSIONS

1. JINSA’s payments for travel, lodging and meals can be either a reportable gift to the Commissioner or income if he provided consideration of equal or greater value. It appears from the facts that the payments are income rather than a gift.
2. *If the Payment is Income:* As noted above, the payment is considered “income” if the official provided consideration of equal or greater value to the source. Income payments that are reimbursement for travel expenses and per diem and received from a bona fide nonprofit entity

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

exempt from taxation under Section 501(c)(3) of the Internal Revenue Code are exempt from the Act's reporting provisions pursuant to Section 82030(b)(2).

*If the Payment is a Gift:* The payments would be exempt from the gift limit by virtue of the exception in Section 89506, but still be reported.

## FACTS

The District is governed by a Board of Port Commissioners (collectively the "Board," individually "Commissioner") and has jurisdiction over tidelands surrounding the San Diego Bay, submerged lands in the Bay, and any other lands acquired by the District, which are held in trust for the benefit of the people of the State of California for the purposes of commerce, navigation, fisheries and recreation, as codified in the Act.

Recently, Port Commissioner, Garry Bonelli (Rear Admiral USN-Ret) received a communication from JINSA inviting him to travel to Israel and Jordan from May 16, 2014 through May 28, 2014. The trip is an annual event held by JINSA for retired generals and admirals (the "RG&A" program) in order to enhance a robust military-to-military dialogue between the American and Israeli defense establishments and is an intensive nine-day program that presents the participating American generals and admirals with an extremely candid look at the strategic environment and current political and security challenges facing Israel, one of America's closest and most important allies in the region and on the global stage.<sup>2</sup> During the annual trip to Israel, recently retired American generals and admirals are invited to visit Israel with JINSA to meet the top echelon of the Israeli military and political leadership.

The Commissioner will travel to and from New York at his own expense from San Diego. JINSA will pay for travel between New York and Israel as well as all lodging and meals. JINSA is not a lobbyist registered to lobby the District. The invitation is due to an existing and previous relationship between the Commissioner and JINSA which existed prior to Mr. Bonelli becoming a Port Commissioner, due to his rank as a Rear Admiral U.S. Navy. Further, the invitation is not being offered to the Commissioner due to his status as an official at the District, and there is no evidence whatsoever at this time that the Commissioner will make or participate in the type of governmental decisions that may have a reasonably foreseeable material financial effect on JINSA. The Commissioner is a full reporter under the District's conflict of interest code.

According to JINSA's website, JINSA was founded in 1976 as a non-profit (501(c)(3)), non-partisan organization to advocate on behalf of a strong U.S. military, a robust national security policy, and a strong U.S. security relationship with Israel and other like-minded

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<sup>2</sup> The RG&A program is one of several programs that JINSA sponsors, including the Law Enforcement Exchange Program which was created in cooperation with the Israel National Police, the Israel Ministry of Internal Security, and the Israel Security Agency (Shin Bet) to support and strengthen American law enforcement counter terrorism practices; and the Military Academies Program in conjunction with the U.S. Air Force Academy, the U.S. Military Academy (West Point), the U.S. Naval Academy, and the U.S. Coast Guard Academy.

democracies. According to JINSA's most recent annual report they seek to "build relationships between the American and Israeli defense and security establishments" and to:

- Provide leadership and affect policy on crucial issues of national security and foreign policy;
- Promote American security cooperation with like-minded democratic countries including, but not limited to, Israel;
- Engage the American defense community about the role Israel can and does play in securing Western, democratic interests in the Middle East and Mediterranean regions; and
- Improve awareness in the general public, as well as in the Jewish community of the importance of a strong American defense capability.

As you noted, since 1981, JINSA has taken close to 400 retired officers to Israel, many of whom serve on JINSA's Board of Advisors. In 1999, JINSA expanded the trip to include travel to Jordan for meetings with the highest echelon of the Jordanian military and intelligence services as well as senior members of the royal family.

During the 2013 Program, the participants<sup>3</sup> observed Israeli military exercises in the field, visited key Israel Defense Force (IDF) and national intelligence installations, and were briefed on the latest Israeli war fighting doctrine, national security plans, and technological and cyber innovations. The generals and admirals met with several dozen senior military and intelligence officials at locations across the Israel. Public officials with whom they met include Minister of Defense Moshe "Bogie" Ya'alon, IDF Chief of Staff, Benny Gantz, Director General of the Ministry of Defense, Udi Shani, and Head of the National Security Council Yaakov Amidror, Maj. Gen. Yaakov Ayish.

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<sup>3</sup> Participants in the 2013 program were: Lt. Gen. David Deptula, USAF (Ret.) - Deputy Chief of Staff for Intelligence, Surveillance and Reconnaissance, Headquarters Air Force; Lt. Gen. David Fridovich, USA (Ret.) - Deputy Commander, U.S. Special Operations Command-USSOCOM; V. Adm. Bernard J. "Barry" McCullough, USN (Ret.) - Commander, U.S. Fleet Cyber Command/Commander, U.S. 10th Fleet; Lt. Gen. Frank Panter, USMC (Ret.) - Deputy Commandant for Installations and Logistics, Headquarters Marine Corps; V. Adm. David Pekoske, USCG (Ret.) - Vice Commandant of the United States Coast Guard; Lt. Gen. Jim Pillsbury, USA (Ret.) - Deputy Commanding General, U.S. Army Materiel Command; V. Adm. William D. Sullivan, USN (Ret.) - U.S. Representative to the NATO Military Committee; Maj. Gen. Byron Bagby, USA (Ret.) - Commandant of the Joint Forces Staff College; Maj. Gen. Rick Devereaux, USAF (Ret.) - Director of Operational Planning, Policy, and Strategy - Headquarters Air Force; Maj. Gen. Jon Gallinetti, USMC (Ret.) - Deputy Commander of Marine Forces Command; Maj. Gen. Paul Lefebvre, USMC (Ret.) - Commanding General of the Marine Corps Forces Special Operations Command - MARSOC; Maj. Gen. John Macdonald, USA (Ret.) - Assistant Chief of Staff, United Nations Command, Combined Forces Command and U.S. Forces Korea; and Brig. Gen. Anne Macdonald, USA (Ret.) - Assistant Commanding General, Afghan National Police Development, Combined Security Transition Command - Afghanistan.

At the completion of the 2012 program, the participants authored a 33-page report covering the Middle East in transition, discussing Iran, Syria, Egypt, the Sinai, Lebanon, Jordan, Turkey, the Gaza and Israel. Some of the specific issues address in the report were Iran and its nuclear weapons program, regime change in Iran, the United States, Israel, and the Iranian nuclear threat, and what happens after an Iranian nuclear breakout, Hezbollah in Lebanon, the Lebanese Armed Forces, Israel vs. Hezbollah: the next round, the Iran-Syria-Hezbollah Axis, the Palestinian-Israeli Conflict, Israel's strategic dilemma, the changing nature of warfare, security changes combating Hezbollah the next time, maintaining the qualitative military edge, hardening against missile attack, the challenges to maritime assets, and U.S.-Israel relations.

## ANALYSIS

### *Gift Rules and Exceptions*

The term "gift" is defined in Section 82028(a) as:

"Any payment that confers a personal benefit on the recipient, *to the extent that consideration of equal or greater value is not received* and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status." [Emphasis added.]

In an effort to reduce improper influences on public officials, the Act regulates the receipt of gifts by public officials in three ways:

- First, the Act places limitations on the acceptance of gifts by certain public officials. The current limit is \$440 from a single source in a calendar year. (Section 89503; Regulation 18940.2.) This gift limit applies to all elected state and local officials or other individuals designated in Section 87200; all candidates for state, local, or judicial office; and any employee designated in his or her agency's conflict-of-interest code, as adopted pursuant to Section 87300, if the employee would be required to disclose the receipt of income or gifts from the source of the gift on his or her statement of economic interest. (Section 89503.)
- Secondly, so that the public is made aware of any potential influences from gifts, the Act imposes reporting obligations on certain public officials requiring that any gift (or any gifts that aggregate to \$50 or more from the same source) received during the calendar year are disclosed on the officials' statements of economic interests. Reporting requirements apply to all officials listed in Section 87200 (Section 87202), all candidates for an office specified in Section 87200 (Section 87201), and employees designated in an agency's conflict-of-interest code as specified in the code (Section 87302(b)).

- Finally, the Act prohibits any public official from making, participating in making, or using his or her position to influence the outcome of a governmental decision involving the donor of a gift or gifts with an aggregate value of \$440 or more provided to, received by, or promised to the official within the 12 months prior to the date the decision is made. (Sections 87100, 87103(e), Regulations 18700, 18703.4.)

Absent an exception, travel costs paid for by a third party for which the official does not provide consideration of equal or greater value are generally reportable gifts under the Act. Under some circumstances, even though a payment for transportation, lodging, and subsistence will be a reportable gift and subject an official to a possible conflict of interest under the Act, the gift may be exempt from the Act's gift limit, which is currently \$440.

Section 89506(a)<sup>4</sup>, in relevant part, provides an exception from the gift limits for certain travel payments:

“(a) Payments, advances, or reimbursements, for travel, including actual transportation and related lodging and subsistence which is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, are not prohibited or limited by this chapter if either the following apply:

“(1) . . .

“(2) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institutions, as defined in Section 203 of the Revenue and Taxation Code, a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States which substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.”

According to JINSA's website, they are a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. Thus, if the payments are a gift they are not subject to gift limits.

Please note, when a official receives a gift that is not subject to gift limits due to application of Section 89506, the gift is still reportable and can be the basis for a potential conflict of interest under Section 87100. (Sections 87100 and 87103.) Specifically, the official

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<sup>4</sup> You also referred to the exception in Regulation 18942(a)(19) which provides an exception where “where the payment is made by an individual who is not a lobbyist registered to lobby the official's agency, where it is clear that the gift was made because of an existing personal or business relationship unrelated to the official's position and there is no evidence whatsoever at the time the gift is made that the official makes or participates in the type of governmental decisions that may have a reasonably foreseeable material financial effect on the individual who would otherwise be the source of the gift. However, the term “individual” is a reference to a natural person and not to an organization or business.

would have a conflict of interest if he or she makes, participates in making or uses his or her official position to influence a governmental decision that would have a reasonably foreseeable material financial effect on the source of the gift within the 12-month period following when the gift is made.

### **Income Rules and Exceptions**

To the extent that consideration of equal or greater value is provided to the source of the payment (as it appears to be the case here), the payment may be considered income rather than a gift. "Income" is broadly defined at Section 82030(a) to include all forms of payment received by a public official, including reimbursement of expenses and per diem payments, and also must be reported on an official's Form 700.

However, Section 82030(b)(2) provides a limited exception from the definition of "income" for "reimbursement for travel expenses and per diem received from a bona fide nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. Assuming that consideration of equal or greater value is provided to the source of the payment, it is exempt from the definition of "income."

Alternatively, the definition of "income" does not include income received from any source outside the jurisdiction and not doing business within the jurisdiction, not planning to do business within the jurisdiction, or not having done business within the jurisdiction during the two years prior to the time any statement or other action is required under this title. (Section 82030.)

Accordingly, the facts you have provided appear to satisfy your burden to establish that the payment is not a gift because adequate consideration will be provided and the payment is exempt from treatment as income because of the income exception for travel expenses and per diem under Section 82030(b)(2).

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel

By: John W. Wallace  
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Legal Division

JWW:jgl